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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

RUBIN FRANK EGLAND,

Defendant and Appellant.

B206350

(Los Angeles County
Super. Ct. No. BA260661)

THE COURT:*

Rubin Frank Egland appeals from the judgment following a court trial that resulted in his conviction of count 1, kidnapping to commit rape (Pen. Code, § 209, subd. (b)(1);¹ count 2, forcible rape (§ 261, subd. (a)(2)); and count 3, genital penetration by a foreign object (§ 289, subd. (a)). The trial court found true the allegation that appellant personally used a firearm within the meaning of section 12022.5, subdivision (a)(1) in the commission of counts 1 and 3 and that he personally used a firearm within the meaning of section 12022.3, subdivision (a) in the commission of counts 2 and 3. The trial court

* BOREN, P. J., DOI TODD, J., ASHMANN-GERST, J.

¹ All further statutory references are to the Penal Code.

also found that the circumstances of the crime satisfied the requirements of section 667.61, subdivisions (a), (b), (d), and (e). The trial court sentenced appellant to an indeterminate term of 25 years to life in count 3 pursuant to section 667.61, subdivisions (f) and (g); stayed a life sentence in count 1 pursuant to section 654; and imposed a determinate term of 11 years in count 2, which consisted of the midterm of six years and a five-year enhancement pursuant to section 12022.3, subdivision (a).

On December 13, 1996, appellant forced Rosa G. at gunpoint from her car to her apartment where he raped her and then penetrated her vagina with his gun.

Appellant appealed the judgment and we affirmed the conviction but remanded the matter to the trial court for resentencing so that the unauthorized life sentence in the count 1, section 209, subdivision (b)(1) conviction could be conformed to the punishment prescribed by then-existing section 208, subdivision (b), which provided for a determinate term of 5, 8, or 11 years. We also ordered resentencing so that the unauthorized term of five years on the section 12022.3 firearm enhancement could be corrected to conform to the then-existing term of four years. And, we ordered that the references to section 12022.53 be stricken from the abstract of judgment because the trial court did not impose or stay such an allegation; that section was never charged separately as a firearm enhancement; and that section did not exist at the time of the crime.

On remand, the trial court resentenced appellant to the midterm of eight years on count 1 and stayed it pursuant to section 654. The trial court imposed a midterm of four years on the section 12022.3 firearm allegation. After resentencing, however, the abstract of judgment still reflected the section 12022.53 charges. Upon appellate counsel's motion to correct the unauthorized references to section 12022.53, the trial court struck the references and prepared a corrected abstract of judgment.

We appointed counsel to represent appellant on this appeal.

After examination of the record, counsel filed an "Opening Brief" in which no issues were raised.

On April 21, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

We have examined the entire record and are satisfied that appellant's attorney has fully complied with his responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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